

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD

In the Matter of

DIRECTOR, DEPARTMENT OF LABOR  
AND INDUSTRIAL RELATIONS,

Complainant,

and

HAWAIIAN ELECTRIC COMPANY, INC.,

Respondent.

CASE NO. OSH 2008-11

ORDER NO. 298

PRETRIAL ORDER

PRETRIAL ORDER

Pursuant to the initial conference in this matter held by the Hawaii Labor Relations Board (Board) on November 6, 2008, and attended by Herbert B.K. Lau, Deputy Attorney General, for Complainant, and Terry E. Thomason, Esq., for Respondent, IT IS HEREBY ORDERED THAT:

1. The issues to be determined at trial are as follows:

- A. Whether Citation 1, Item 1, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 1 alleged:

29 CFR 1926.146(c)(2) [Refer to chapter 12-67.2, HAR] was violated because:

The employer did not post a sign or utilize an equally effective measure to indicate that the Surface Condenser and its adjacent tunnels were permit required confined spaces.

- B. Whether Citation 1, Item 2a, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 2a alleged:

29 CFR 1910.146(c)(4) [Refer to chapter 12-67.2, HAR] was violated because:

The employer did not develop and implement a written permit space program for employees required to enter and perform work in the Surface Condenser Waterbox and its adjacent tunnels.

- C. Whether Citation 1, Item 2b, including the characterization as "Serious," resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 2b alleged:

29 CFR 1910.146(d)(2) [Refer to chapter 12-67.2, HAR] was violated because:

The employer did not identify potential engulfment and atmospheric hazards before allowing employee entry into the Surface Condensers & its adjacent tunnels.

- D. Whether Citation 1, Item 2c, including the characterization as "Serious," resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 2c alleged:

29 CFR 1910.146(d)(9) [Refer to chapter 12-67.2-1, HAR] was violated because:

The employer did not develop and implement procedures for providing rescue and emergency services for entrants required to perform work in the Surface Condenser Waterbox and its adjacent tunnels.

- E. Whether Citation 1, Item 3, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 3 alleged:

29 CFR 1910.146(e)(1) [Refer to chapter 12-67.2, HAR] was violated because:

The employer did not document the completion of measures required by 29 CFR 1920.146(d)(3) by preparing an entry permit for the entrants to the Surface Condenser Waterbox and its adjacent tunnels.

- F. Whether Citation 1, Item 4, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 4 alleged:

29 CFR 1910.146(g)(3) [Refer to chapter 12-67.2, HAR] was violated because:

The employer did not provide training that established employee proficiency in duties including but not limited to attendant roles, entrant roles, and hazard recognition as required by 29 CFR 1920.146, Permit-required confined spaces, and did not introduce new or revised procedures, as necessary, for compliance.

- G. Whether Citation 1, Item 5, including the characterization as "Serious" and the associated penalty of \$1,500.00, resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 5 alleged:

29 CFR 1910.215(b)(9) [Refer to chapter 12-80.1, HAR] was violated because:

The distance between the wheel periphery and the left and right adjustable tongue guards of a Van Dorn 10-inch Bench Grinder (Van Dorn., SN D 704385) was measured at: left side - 1 inch, and right side - 1 3/4 inch. The potential result of an improperly adjusted tongue guard is bruises and contusions from being struck by pieces of a broken wheel.

- H. Whether Citation 1, Item 6, including the characterization as "Serious" and the associated penalty of \$1,875.00, resulting from Inspection No. 311431001, was valid and proper.

Citation 1, Item 6 alleged:

29 CFR 1910.305(b)(2) [Refer to chapter 12-89.1, HAR] was violated because:

A double outlet receptacle was missing a faceplate, thus exposing the employees to the risk of inadvertent contact with the live parts inside. The opening above the receptacle was measured at 3 inches wide by 5/8 inches high. The potential result of contact with the live parts would be serious injury or death by electrocution.

- I. Whether Citation 2, Item 1, including the characterization as "Other," resulting from Inspection No. 311431001, was valid and proper.

Citation 2, Item 1 alleged:

29 CFR 1910.269(d)(2)(v) [Refer to chapter 12-105.1, HAR] was violated because:

The employer did not conduct periodic inspections of the tagout procedures for the condenser cleaning crew and its Shift Supervisor. This inspection by an individual with system knowledge is necessary to ensure that the tagout procedures continue to be implemented properly.

- J. Whether Citation 2, Item 2, including the characterization as "Other," resulting from Inspection No. 311431001, was valid and proper.

Citation 2, Item 2 alleged:

29 CFR 1910.269(d)(2)(v)(D) [Refer to chapter 12-105.1, HAR] was violated because:

A review was not conducted to ensure that the purpose and function of the energy control program are understood by employees and that the knowledge and skills required for the safe application , usage, and removal of the energy controls are acquired by employees; this review separate from training is necessary to ensure that the elements set forth in paragraph (d)(2)(vii) are being implemented by employees who are cleaning the condenser.

- K. Whether Citation 2, Item 3 including the characterization as "Other," resulting from Inspection No. 311431001, was valid and proper.

Citation 2, Item 3 alleged:

29 CFR 1910.269(d)(2)(v)(E) [Refer to chapter 12-105.1, HAR] was violated because:

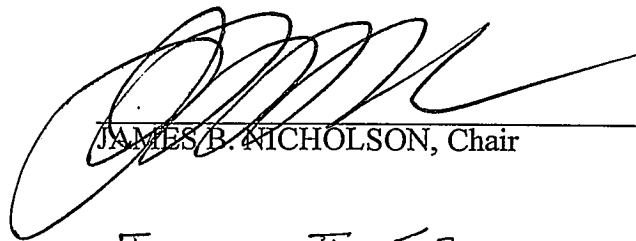
There were no records to certify that the requirements of paragraph (d)(2)(v) of this section have been accomplished for tagging out the condenser while it was being cleaned. There were no records to reflect the names, dates, or equipment to certify that inspections are being completed.


2. The deadline for filing of the parties' final naming of witnesses is **December 8, 2008**. Each party shall file with the Board the original and four copies of its list of witnesses it plans to call at trial, along with the witnesses' addresses and brief summary of expected subject of their testimony, with a certificate of service to the other party, by this date. Each party shall also exchange any expert witness reports by this date.
3. The discovery cutoff date is **January 6, 2009**. All other discovery and information requests, including depositions and document requests, must be completed by this date.
4. Trial in this matter is scheduled for **February 9-10, 2009 at 9:00 a.m.**, in the Board's hearing room located at Room 434, 830 Punchbowl Street, Honolulu, Hawaii, 96813. The trial will continue from day-to-day until completed.

5. Hereafter, this Pretrial Order shall control the course of proceedings and may not be amended except by consent of the parties and the Board, or by order of the Board.

DATED: Honolulu, Hawaii, November 7, 2008.

HAWAII LABOR RELATIONS BOARD

  
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JAMES B. NICHOLSON, Chair

  
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EMORY J. SPRINGER, Member

NOTICE TO EMPLOYER

You are required to post a copy of this Order at or near where citations under the Hawaii Occupational Safety and Health Law are posted at least five working days prior to the trial date. Further, you are required to furnish a copy of this Order to a duly recognized representative of the employees, if any, at least five working days prior to the trial date.

Copies sent to:

Herbert B.K. Lau, Deputy Attorney General  
Terry E. Thomason, Esq.